



## Terms and Conditions for Purchase of Goods and Services

### 1. INTERPRETATIONS AND GENERAL MATTERS

#### 1.1 Definitions

“Day” means calendar day.

“FIS” means delivery of the Goods, ‘free into store’ and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods) to the delivery point for the Goods.

“Goods” means all Goods, Services, equipment, materials, articles, or any other property or parts to be provided by the Supplier under the Purchase Order and includes, without limitation, all Services including installations, design, manufacture, documentation, producer statements, warranties etc, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required hereunder.

“GST” means goods and services tax in respect of the Goods and Services Tax Act 1985.

“Barrett Homes” means Barrett Homes Limited; Barrett Homes (Bay of Plenty) Limited; Barrett Homes (Central Otago) Limited; Barrett Homes Central Plateau Limited; Barrett Homes (Northland) Limited; Barrett Homes (Taranaki) Limited.

“Price” means the price of Goods or Services as agreed between Barrett Homes and the Supplier or Subcontractor, as notated on the face of the Purchase Order.

“Purchase Order” means the Purchase Order document issued by Barrett Homes to the Supplier, which identifies the Supplier, includes but is not limited to a brief description of the Goods and a list of the documents comprising the Purchase Order.

“Site” means the place or places specified in the Purchase Order to which the Goods are to be delivered and/or Services are to be performed by the Supplier.

“Supplier” means a person, entity, subcontractor, contractor or similar such provider, who has agreed or contracted to provide Goods and/or is identified on the Purchase Order form.

“Warranty Period” means the period commencing on the date of delivery of the Goods and lasting for a minimum period of twelve (12) months thereafter, or such longer period as specified on the Purchase Order, or any other period identified in the projects contract documents.

“Delivery” means commencing the service(s) or providing the Goods to the prescribed location.

“Unauthorised Works” means any additional work or costs related to a Purchase Order carried out by the Supplier which has not been authorised, in writing, by Barrett Homes.



Such work includes but is not limited to changes in scope of work, increase in labour or material costs, transport costs, costs for after hours works, documentation costs etc.

“Client” means any person or entity whom Barrett Homes has entered into an agreement to supply Goods.

#### 1.2 Interpretations

Words importing the singular are deemed to include the plural and vice versa. Headings and subheadings are inserted for convenience only and shall not be used to interpret the text. Words denoting a natural person shall include a corporation and vice versa.

#### 1.3 Supplier to Inform Itself

The Supplier shall be deemed to have carefully examined all documents furnished by Barrett Homes or made available by Barrett Homes and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods. It is the Suppliers sole responsibility to arrange for this inspection of all contract documents pertaining to any specific Purchase Order or project for which the goods or services are being supplied for. Such documents are available on written request to Barrett Homes. The Supplier is specifically deemed to have examined and understood any head contract agreement that Barrett Homes has or will enter into with the project Client where such head contract agreement effects the Supplier.

#### 1.4 Order of Precedence

These Terms and Conditions for Purchase of Goods and Services shall prevail, and take priority over any other terms and conditions of the Supplier or any other party, including but not limited to any supplier terms and conditions referred to in any communication or pricing preceding the usage of the Purchase Order.

Unless otherwise stated, the order of precedence of any of the following documents listed in the Purchase Order shall be as follows:

1. Any specific terms written on the face of the Purchase Order;
2. These Terms and Conditions for Purchase of Goods and Services;
3. Any specification or drawings pertaining to the Purchase Order.

#### 1.5 Ambiguities

If the Supplier discovers any ambiguity in the Purchase Order it shall immediately notify Barrett Homes in writing. Barrett Homes shall then determine the correct interpretation of the Purchase Order. Barrett Homes’s determination shall be final and binding on the Supplier and have no effect on the Purchase Order price, delivery, quality or quantity.



## 1.6 Use of Documentation

The documents shall not be copied or used for any other purpose other than the supply of the Goods, without the prior written approval of Barrett Homes.

## 1.7 Confidentiality

Any information provided by Barrett Homes to the Supplier that is noted as confidential shall not be disclosed to any third party without the prior written consent of Barrett Homes. This obligation shall continue and survive the completion or termination of the Purchase Order.

## 1.8 Waiver

No failure or delay on the part of Barrett Homes in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

## 1.9 Subcontracting and Assignment

The Supplier shall neither subcontract nor assign all or any part of the Purchase Order without the prior written approval of Barrett Homes. Approval of Barrett Homes to any subcontract shall not relieve the Supplier of any of its obligations under the Purchase Order.

## 1.10 Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently.

## 1.11 Health and Safety Obligations, Licences and Laws

Barrett Homes has a statutory obligation under the Health and Safety at Work Act 2015 to ensure all subcontractors and suppliers of services abide by HSWA and Worksafe NZ Best Practice Rules and Regulations. All suppliers of services are required under the Act to provide the main contractor with all necessary documentation including and not limited to a copy of their Company Health and Safety Policy, Insurance Currency, evidence of relevant and regulatory (if applicable) training and competency to undertake the service supplied to Barrett Homes and submit a Task Analysis or Job Safety Analysis prior to commencing work.

Barrett Homes reserve the right to retain a proportion of the total contracted work value up to but not exceeding 10% should all of the required documentation not be supplied within 48 hours of being requested to do so or the contracted works commencing on site, whichever is the earlier. Once the required documentation has been received and approved by Barrett Homes any retained amounts shall be released less any costs incurred by Barrett Homes in facilitating and requesting the required documentation.

The required documentation must be provided in full 48 hours prior to the project commencing or within 48 hours of being requested, whichever is the earlier.



The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders, rules, Health & Safety at Work Act 2015 (including all subsequent amendments), Health and Safety rules and regulations in force on the Site and all reasonable safety related instructions given by Barrett Homes, and with the lawful requirements of Public and other Authorities in any way related to the supply of the Goods.

#### 1.12 Entire Agreement

The Purchase Order constitutes the entire agreement between Barrett Homes and the Supplier. The parties shall not be bound by or liable for any statement, representation, promise or understanding not set forth therein. Nothing contained in proposals, correspondence, discussions or negotiations prior to the date of the Purchase Order has any effect on the Purchase Order unless specifically incorporated therein.

#### 1.13 Subsequent Purchases

Where a purchase order has been issued to a supplier for the supply of goods to a given project, it is deemed that all subsequent purchase instructions (whether referred to these Terms and Condition's or not) for the same project will also be governed by these Terms and Conditions for Purchase of Goods & Services whether stated at the time of the subsequent purchase(s) or not.

#### 1.14 Contractual Relationships

The issuance by Barrett Homes of a Purchase Order and the acknowledgement or commencement of delivery, of the "Goods" together with these Terms and Conditions for Purchase of Goods and Services, form the basis of a contractual relationship between Barrett Homes and the Supplier. Both parties agree to be bound by these Terms and Conditions for Purchase of Goods and Services.

#### 1.15 Acceptance

Acceptance of these Terms and Conditions for Purchase of Goods and Services is deemed to have occurred upon the expiration of two days from the date of sending the Purchase Order to the Supplier, or immediately on commencement of the Goods/Services by the Supplier, whichever is the earlier.

#### 1.16 Withholding Payment

It is agreed that a minimum of 10% shall be deducted from any payment due to the Supplier.

By virtue of acceptance of a Purchase Order by the Supplier it is agreed that 10% of the value of any invoice for payment or payment claim, from the Supplier, shall be deducted and withheld from payment until six months after the date of Practical Completion of the Clients project and the Supplier providing all documentation as contained in clause 4.10



## 2. PERFORMANCE AND QUALITY

2.1 All Goods shall be suitable for the purpose for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good engineering practice and comply with all applicable New Zealand Standards and/or other referenced codes, the requirements of the relevant Statutory Authorities and the Law. The Goods are to be delivered to a quality that meets relative industry standards and is compliant, in all respects, with these Teams and Conditions of Trade.

2.2 The Supplier represents and warrants to Barrett Homes that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order, and all relevant New Zealand Standards, building codes and any other industry or statutory standard.

2.3 The Goods must be tested in accordance with the requirements of the Specification. Unless otherwise set out elsewhere in the Purchase Order, any tests and the costs thereof shall be the responsibility of the Supplier. The results of tests shall be promptly supplied to Barrett Homes in writing, if requested.

2.4 Barrett Homes shall have the right to inspect, expedite and monitor the Goods prior to delivery and the Supplier shall give Barrett Homes access to the Supplier's premises for such purpose during its normal working hours. The Goods will not be accepted by Barrett Homes until inspected and approved by Barrett Homes. Any inspection by Barrett Homes shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and shall in no way impair Barrett Homes's right to require subsequent correction of non-conforming Goods.

2.5 The Supplier shall comply with the standards of quality specified in the Purchase Order. If no standards are specified the Supplier shall comply with the best quality standards applicable to the Goods.

2.6 The Supplier warrants that the Goods shall be:

1. Free from liens, charges, encumbrances, mortgages or other defects in title;
2. Free from defects in design, materials and workmanship;
3. Conform to the conditions and specifications of the Purchase Order;
4. Conform to all applicable laws, regulations, codes and New Zealand Standards to which the Goods are subject;



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5. New and made to the specified quality;
6. "Fit for purpose"

The warranties noted above are in addition to any statutory warranties applicable to the Goods.

2.7 During the Warranty Period, Barrett Homes shall give notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to Barrett Homes correct any defect or failure in the Goods covered by the warranty by way of repair, replacement, modification or other means acceptable to Barrett Homes.

2.8 If the Supplier fails to correct any defects and failures of which it has been notified by Barrett Homes within the time specified in the notice (which shall not be unreasonable), Barrett Homes shall have the right to rectify the Goods or have the rectification undertaken by a third party. If no time is specified in the notice, the time shall be five calendar days. All costs so incurred shall be a debt due and payable by the Supplier to Barrett Homes or deducted from moneys otherwise owing from Barrett Homes (including retention moneys) to the Supplier. Any Goods repaired during the warranty period (including those repaired in accordance with clause 2.8) may be subject to a further full Warranty Period, if required by Barrett Homes, commencing on the date of completion of any such repair.

### 3. DELIVERY

3.1 Unless otherwise specified in the Purchase Order, the Goods shall be delivered FIS, adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified on the Purchase Order form. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of Barrett Homes at the point of delivery. This provision does not apply to Services.

3.2 The Goods shall become the property of Barrett Homes upon delivery of the Goods to Barrett Homes or any building site under the control of Barrett Homes. Notwithstanding that Barrett Homes has taken delivery of the Goods, the Supplier shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.

3.3 The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods.

3.4 If the Supplier fails to deliver the Goods by the specified delivery date(s), Barrett Homes shall be entitled to terminate the Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 7.1 and/or deduct from monies due to the



Supplier as liquidated damages, representing a genuine estimate of Barrett Homes's damages and not as a penalty.

3.5 If Barrett Homes determines that the Supplier of the Goods (and/or Services) is threatening or likely to threaten Barrett Homes ability to meet its obligation in part or in full, to its Client, through slow progress, delays, inadequate or non performance by the Supplier, Barrett Homes shall give three days notice in writing calling for immediate action on behalf of the Supplier to rectify the cause within a further three days. Failure to rectify shall entitle Barrett Homes to cancel the order, and deduct monies from any monies due to the Supplier for damages, (representing a genuine estimate of Barrett Homes's costs), including but not limited to all cost associated with rectification works and / or acceleration costs, and any costs relating to the engagement, supervision and payment of any third party(s) supplier engaged to complete or rectify the Goods. This clause is for the sole benefit of Barrett Homes. Barrett Homes shall have sole discretion as to whether the Supplier is likely to, or is threatening the ability for Barrett Homes to meet its obligations to its Client.

#### 4. PRICE AND PAYMENT

4.1 All invoices presented for payment must have a valid Purchase Order number. Invoices without a valid number will be returned to the Supplier for revalidation and resubmission.

4.2 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, materials, plant, transport, exchange rates, or changes in the scope of works (unless approved in writing by Barrett Homes before commencing).

4.3 Barrett Homes is not liable to pay any charges relating to "unauthorised works". If there is ambiguity or uncertainty, the supplier must seek written clarification from Barrett Homes together with written authorisation to proceed with "unauthorised works" prior to commencing such unauthorised works.

4.4 Unless otherwise agreed in writing, all prices quoted to Barrett Homes are in New Zealand currency, fixed and not subject to escalation, inclusive of any taxes (except GST unless specifically stated as GST inclusive), levies, duties, insurance, freight (including all packaging, tagging, delivery to the Site), revenue or other charges whatsoever relating to the delivery.

4.5 The Supplier must issue to the recipient at the time of claiming payment a valid tax invoice or CCA payment claim for the purpose of obtaining an input tax credit for any GST so paid. Such tax invoice or CCA payment claim must be received no later than the 5<sup>th</sup> day



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after the end of the month of delivery. Failure to provide the invoice or payment claim before this time will not be considered for payment until the following month.

4.6 Before becoming entitled to receive payment (and unless otherwise specified in the Purchase Order), the Goods must be delivered together with any certificates, producer statements or warranty documents in relation to the Goods. Subject to clause 4.7, the Price indicated on the Purchase Order will be paid by Barrett Homes.

4.7 The Supplier shall be responsible for the payment of all relevant government and overseas taxes, duties and charges payable with respect to the Goods. The Purchase Order shall be deemed to be inclusive of all such taxes, duties and charges.

4.8 The Supplier agrees that Barrett Homes may deduct from monies due to the Supplier, any monies due from the Supplier to Barrett Homes for any reasons as contained in these "Terms and Conditions for Purchase of Goods and Services" in respect of the Purchase Order.

4.9 In the event the Supplier refers any claims for payment to adjudication under applicable legislation that has amongst its objectives the creation of a statutory entitlement to progress payments for the performance of work or supply of Goods or provides procedures for determining or securing payment of that entitlement, pending any final assessment under the relevant construction contract, then the amount of any determination by an adjudicator appointed under the relevant legislation in respect of that claim will be the maximum amount of the Supplier's entitlement in respect of that claim under this Purchase Order.

4.10 The Supplier agrees that the due date to provide all relevant documents, including but not limited to as LBP signoff, built drawings, user manuals, producer statements, warranties, guarantees, timesheets, etc. to Barrett Homes shall be within 15 calendar days of delivery or commencement of services on site. Failure of the Supplier to provide all relevant documents by the due date shall entitle Barrett Homes to withhold payment(s) and/or deduct reasonable costs, including liquidated damages, from payments or retention sums, until all relevant documents are received. The Supplier hereby acknowledges and agrees that the withholding of any of the aforementioned documents for whatever reason (including but not limited to non-payment or late payments) is a breach of these Terms and Conditions. Barrett Homes shall be entitled to take all necessary steps to procure the aforementioned documents and the Supplier acknowledges and agrees that all costs associated with procuring the documents shall be deducted from any monies owing to the Supplier and any shortfall in payment of such costs will become liable for the Supplier to pay Barrett Homes. Further the Supplier agrees that Barrett Homes shall be entitled to claim the sum of \$100/day, by way of deduction from any funds due to the Supplier, for any delays in receiving the



aforementioned documents beyond the date of practical completion as determined by the contract documents.

4.11 The supplier acknowledges that Barrett Homes will not accept payment terms less than the last day of the month following the month of delivery.

4.12 The Supplier agrees that Barrett Homes may withhold from any payment due to the Supplier those amounts Barrett Homes deems necessary (at its sole discretion) to ensure the integrity of the performance of the project(s). Sums may be withheld for, but not limited to, the following reasons;

- Poor quality workmanship on current or past project(s)
- Client or Client Representative instructions to withhold sums
- Supplier created delays, and the management costs associated with remedying those delays
- Over claiming or claiming in advance of goods supplied on invoicing on current or past project(s)
- Poor performance, and the management costs associated with remedying that poor performance
- Maintenance retention
- Unfulfilled obligations on current or past project(s)
- Local authority concerns
- Supplier performance issues (time, quality)
- Liquidated damages / damages / penalties / retentions
- Contra charges, deductions, counter claims, or offsetting of costs relating to the Suppliers work on current or past project(s)
- Non receipt of all relevant documents including but not limited to clause 4.10 here in
- Over payments on current or past project(s)
- Disputed invoices

4.13 All goods supplied and intended to be invoiced to Barrett Homes for payment, must have a relevant signed purchase order issued by Barrett Homes. The Supplier is advised not to supply any goods without first receiving a signed Barrett Homes Purchase Order.



It is acknowledged and agreed that Barrett Homes is not liable for payment of invoices or payment claims for goods supplied (invoices) that do not have a supporting Barrett Homes Purchase Order authorising the supply of the goods.

4.14 Barrett Homes accepts no liability for the payment of any additional costs or variation costs without such costs being agreed in writing before such costs are incurred. If no price is stated on the Purchase Order the price shall be;

1. the price as contained in any recognised relevant supplier merchant price book plus 8% profit margin;
2. the recognised market wholesale, trade, or other comparative price Barrett Homes is able to procure for similar goods/services.
3. the labour rate applicable shall be the recognised hourly rate as determined by the relative New Zealand industry body or association inclusive of overheads.

4.15 Where a dispute arises over the value of an invoice where no price has been stated on the Purchase Order, and the dispute is unable to be resolved under I, ii and iii above, the following mechanism will prevail;

Barrett Homes shall obtain relative, comparative, similar costings from a third party. The Supplier agrees that the third party costings will form the basis for negotiating settlement of the disputed invoice(s).

## 5. RISK, TITLE & INSURANCE

5.1 Risk and liability for loss or damage to the Goods ordered pursuant to this Purchase Order will pass to Barrett Homes only on acceptance of the Goods.

5.2 Title to and ownership of the Goods shall pass to Barrett Homes on delivery of the Goods to Site, except where payment is made prior to delivery, in which case property in the Goods will pass to Barrett Homes on payment.

5.3 Barrett Homes reserves the right to cancel the Purchase Order or any part of it at any time prior to delivery of the order in full.

5.4 In providing the delivery of the Goods the Supplier must maintain transit insurance or carrier's risk insurance and third party liability insurance for a sum equal to the full replacement value of the Goods (including delivery costs) and in respect of third party liability insurance two million dollars (\$2,000,000).

## 6. VARIATIONS



6.1 Barrett Homes may vary the work under the Purchase Order or any condition thereof in writing and the Supplier shall carry out any such variation as directed by Barrett Homes. The Supplier's Price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall be agreed between Barrett Homes and the Supplier in writing prior to the Supplier carrying out any such variation. If agreement cannot be reached, Barrett Homes shall determine the Price for the variation and its effect on the delivery date(s) of the Goods.

6.2 The Supplier shall not vary the work under the Purchase Order or any condition thereof, except as directed and approved by Barrett Homes in writing. No variation shall invalidate the Purchase Order.

6.3 Any increase in price to that stated on the Purchase Order must be approved in writing by Barrett Homes prior to any activity giving rise to the price increase undertaken by the Supplier.

## 7. WARRANTY

7.1 Without limiting any of Barrett Homes's other rights and remedies available under these Standard Terms and Conditions for Purchase of Goods and Services or at law, the Supplier guarantees the Goods against any omissions, defects or failures whether due in whole or in part to faulty design, materials or workmanship or any other cause which occurs (whether or not apparent) at any time during the Warranty Period.

7.2 If the Supplier breaches its obligations under the warranty in clause 7.1 of these Terms and Conditions for Purchase of Goods and Services, the Supplier will, at Barrett Homes's option and at the Supplier's expense:

1. Refund the Price for and, where applicable, remove such of the Goods that are non-conforming and/or
2. Repair, modify or replace such Goods, and/or
3. Resupply the Services.

7.3 Any Goods repaired/replaced or Services resupplied will be subject to a further full Warranty Period.

## 8. INDEMNITY



8.1 The Supplier (or subcontractor) will, at its expense, defend any third party claims brought against Barrett Homes or its directors, staff, contractors, officers, or agents (collectively, "Indemnitees").

- (i) any claim that, if true, would constitute a breach of the Agreement by Supplier (or subcontractor).
- (ii) any claim related to injury, disability, harm to, or death of any person (e.g. worker, public, claims) or damage to any property arising out of or related to performance of any Work; or
- (iii) any claim that otherwise arises from the acts or failures to act of Supplier (or subcontractor) or its agents (including any claim that the Goods infringes upon the rights of any third party)

The Supplier (or subcontractor) will indemnify, defend and hold harmless the Indemnitees from all actions, suits, costs, damages, and fees (e.g. legal fees and the fees of other professionals), losses, fines, penalties and judgments incurred by any of them that are attributable to any such claim. Should the Goods, in whole or in part, constitute an infringement and any use of it be enjoined or threatened to be enjoined, the Supplier (or subcontractor) will notify Barrett Homes and, upon Barrett Homes request and at Supplier's (or subcontractor's) expense: (i) procure for Barrett Homes the right to continue use of the Goods, or portion of it, as applicable; or (ii) replace or modify the Goods, or any portion of it, with a non-infringing version, provided that the replacement or modification meets all Specifications to Barrett Homes satisfaction. If (i) or (ii) of the previous sentence are not available to Supplier or subcontractor, in addition to any damages or other remedies to which Barrett Homes may be entitled, Supplier or subcontractor will refund to Barrett Homes all amounts paid to Supplier or subcontractor for the applicable Goods.

8.2 The provisions in clause 8 (Indemnity) will remain in full force and effect until all the obligations under the Purchase Order and these Terms and Conditions of Purchase of Goods and Services have been fully satisfied by the Supplier.

## 9. TERMINATION

9.1 In the event of a breach by the Supplier of any of the Standard Terms and Conditions for Purchase of Goods and Services, which in the opinion of Barrett Homes will delay the completion of the Purchase Order and which is not remedied within three (3) days of Barrett Homes notifying the Supplier in writing of any such breach, Barrett Homes may terminate the Purchase Order in whole or part. In the event of termination, Barrett Homes shall be compensated for any additional costs, damages etc. by the Supplier. Such costs or part thereof shall be deducted from any payments due to the Supplier.



9.2 If, in the opinion of Barrett Homes, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy, inadequate resourcing, poor quality, delays, frustration of the works, Barrett Homes and Supplier relationship breakdown or related reasons, Barrett Homes shall be entitled to terminate the Purchase Order.

9.3 Notwithstanding any other provisions of the Purchase Order, Barrett Homes may terminate the Purchase Order by giving five (5) days written notice to the Supplier.

9.4 In the event of insolvency of the Supplier or its default under Clause 9.1, Barrett Homes shall immediately suspend any further payment to the Supplier. Any additional monies required by Barrett Homes to complete the Purchase Order in excess of what Barrett Homes would have paid under the Purchase Order shall be a debt due and payable by the Supplier to Barrett Homes.

## 10. DISPUTES

10.1 Notwithstanding any dispute between Barrett Homes and the Supplier, the Supplier shall ensure that the progress of the work under the Purchase Order is continued without any effect on the delivery of Goods or services, including but not limited to the timely performance of duties, quality and provision of all producer statements, warranties, as built drawings, guarantees, etc.

10.2 Disputes or differences arising between Barrett Homes and the Supplier shall preferably be settled quickly and by negotiation at senior management level if required.

10.3 Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the rules of the Arbitrators' and Mediators' Institute of New Zealand.

10.4 In the event that the dispute has not been settled within forty (40) working days (or such other period as may be agreed to in writing between the parties) after the appointment of the mediator, the dispute shall be referred by either party to arbitration in accordance with the provisions of the Arbitration Act 1996. In any arbitration both parties shall be entitled to be legally represented. Unless the parties agree upon an Arbitrator, a single Arbitrator shall be appointed by the President, for the time being, of the Arbitrators' and Mediators' Institute of New Zealand, taking into account the nature of the dispute.

## 11. APPLICABLE LAW



11.1 This Purchase Order shall be governed by and construed in accordance with New Zealand law. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining any disputes or proceedings arising out of or in connection with this Purchase Order and these Terms and Conditions for Purchase of Goods and Services.

## 12. GENERAL

12.1 If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

12.2 Barrett Homes reserves the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which Barrett Homes posts the revised Terms and Conditions for Purchase of Goods and Services on the Barrett Homes website, [www.BarrettHomes.co.nz](http://www.BarrettHomes.co.nz).

12.3 The failure by Barrett Homes to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect Barrett Homes's right to subsequently enforce that provision.